UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/658,424	09/08/2000	Changming Liu	09725-005001	2970

44987   7590   04/18/2006

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EXAMINER
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ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	09/658,424	LIU ET AL.
	Examiner	Art Unit	
	David E. England	2143	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>21 February 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3 </u>months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>*1-22*</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

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Continuation of 11. does NOT place the application in condition for allowance because: In the Remarks, Applicant argues in substance that Iverson does not disclose or suggest providing a shared bandwidth bucket associated with a plurality of the guaranteed bandwidth buckets.

Applicant further goes on to state, " This section of IVERSON et al. discloses a leaky bucket priority scheme, wherein excess bandwidth credits for first bucket 402 are added to the ESum bucket 404. The excess bandwidth stored in bucket 404 is then used when the level of the first bucket 402 drops below zero. This section of IVERSON et al. does not disclose providing a shared bandwidth bucket associated with a plurality of guaranteed bandwidth buckets, as recited in claim 1. Even assuming arguendo that IVERSON et al. disclose a shared bandwidth bucket associated with a single guaranteed bandwidth bucket (e.g., First Bucket 402), this association is a one-to-one association, resulting in bandwidth overages from bucket 402 being applied to bucket 404 for subsequent use when the level of bucket 402 drops below zero. Contrary to this disclosure, claim 1 recites a shared bandwidth bucket being associated with a plurality of guaranteed bandwidth buckets. By associating multiple guaranteed bandwidth buckets with a shared bandwidth bucket, traffic resources may be more optimally distributed. Clearly, IVERSON et al. fails to disclose each and every element of claim 1, as required under 35 U.S.C. 102. In responding to Applicants prior arguments relating to claim 1, the Examiner indicates that the "first bucket" in Iverson is the CIR and what can be considered the "second and third bucket" are buckets 402 and 404. (Office Action, pg. 11). Following through on this rationale, equating the system of IVERSON et al. to the method of claim 1, IVERSON et al. must disclose, either explicitly or inherently, allocating bandwidth to the Second Bucket 404 based on the underutilization of bandwidth in the CIR 400 and the First Bucket 402; and sharing excess bandwidth developed from the underutilization of the guaranteed bandwidth allocated to CIR 400 and First Bucket 402 including borrowing bandwidth from the Second Bucket 404 by a respective guaranteed bandwidth bucket (i.e., CIR 400 and First Bucket 402) to allow traffic to pass immediately through the network appliance. Clearly, IVERSON et al. does not disclose or even remotely suggest allocating bandwidth to the Second Bucket 404 based on the underutilization of bandwidth in CIR 400.

""On the contrary, all bandwidth delivered by CIR 400 is "used" in terms of its allocation to a port. As described above, Second Bucket 404 is clearly associated directly with First Bucket 402 to maintain excess bandwidth allocated to, but not used by, First Bucket 402.""

As to the first Remarks, Applicant is asked to over look the reference of Iverson again, column 17, lines 41 - 50, which states in the first sentence that, "At the end of every evaluation interval the Committed Imformation Rate (CIR) quantum is emptied into a the CSum bucket 402 "" and/ or the ESum bucket 404"". Therefore, it is very apperent that all bandwidth delivered by CIR 400 can go to either bucket 402 or 404 as broadly interpretated as cited.

In all other Remarks Applicant relies on this rational to state that because Iverson does not teach the prior art as described above, the prior art could not teach the other claims as stated.
Examiner relies on the above explanation and rasional in the response to the other remarks from the Applicant.